

UNITED STATES OF AMERICA,

THE STATE OF OHIO,

V.

CITY OF FOSTORIA, OHIO,

Defendant.

Judge:

CONSENT DECREE

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APPENDIX A – FOSTORIA’S NPDES PERMIT

APPENDIX B – FOSTORIA’S ORDINANCE NO. 2005-19 AND 2006-32

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
and)	
)	
THE STATE OF OHIO,)	
)	
Plaintiffs,)	Civil Action No.:
)	
v.)	Judge:
)	
CITY OF FOSTORIA, OHIO,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

WHEREAS, Plaintiff United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("U.S. EPA"), filed a Complaint in this matter against the Defendant, City of Fostoria ("Fostoria"), seeking injunctive relief and civil penalties, and alleging, inter alia, that Fostoria violated the Clean Water Act (the "CWA"), 33 U.S.C. § 1251 et seq., and certain terms and conditions of the National Pollutant Discharge Elimination System ("NPDES") permit issued to Fostoria pursuant to the CWA relating to the municipal wastewater treatment plant ("WWTP") and sewer system owned and operated by Fostoria;

WHEREAS, Plaintiff State of Ohio ("Ohio"), on behalf of the Ohio Environmental Protection Agency ("Ohio EPA"), simultaneously filed a separate Complaint against Fostoria concerning Fostoria's WWTP and sewer system and alleging violations of the CWA and of Chapter 6111 of the Ohio Revised Code ("O.R.C.");

WHEREAS, the United States and Ohio moved for consolidation of their actions;

WHEREAS, Fostoria denies the allegations in the federal and state Complaints and denies that any violations occurred;

WHEREAS, nothing in this Consent Decree will be construed as an admission by Fostoria of violations of any provisions of the CWA, or of Fostoria's current or past NPDES permits, or of Chapter 6111 of the Ohio Revised Code;

WHEREAS, the United States, Ohio, and Fostoria (the "Parties") recognize, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I below, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355. This Court also has personal jurisdiction over the Parties to this action. Venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a). The Complaints state claims upon which relief may be granted. Authority for the United States to bring its action is vested in the United States Department of Justice pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

2. Fostoria waives any and all objections that it might have to the Court's jurisdiction to enter and enforce this Consent Decree and to venue in this District.

II. APPLICABILITY AND BINDING EFFECT

3. This Consent Decree will apply to and be binding upon the United States, on behalf of U.S. EPA, the State of Ohio, on behalf of Ohio EPA, and upon Fostoria, its successors and assigns, its officers, directors, employees, and agents in their capacities as such, and all other persons and entities as provided for in Fed. R. Civ. P. 65(d). In any action to enforce this Decree, Fostoria will not raise as a defense to liability the failure of its officers, directors, agents, servants, contractors, employees or any other persons or entities provided for in Fed. R. Civ. P. 65(d) to take any actions necessary to comply with the provisions hereof; provided, however, that nothing in this Paragraph will limit the applicability of Sections XVII ("Force Majeure between the United States and Fostoria") and XVIII ("Potential Force Majeure between Ohio and Fostoria") to the extent that any such failure is attributable to a Force Majeure event as defined in Paragraph 96.

4. Effective from the date of lodging of this Decree until its termination, in the event that Fostoria transfers any ownership or operation of its WWTP, the Sewer System, or any portion of its WWTP or Sewer System, and includes in such transfer, the transfer of any obligations under this Consent Decree, Fostoria will give written notice and a copy of this Consent Decree to any successors in interest at least thirty (30) days prior to such transfer. Fostoria will condition any transfer, in whole or in part, of ownership, operation, or other interest of the WWTP, the Sewer System, or any other portion of its WWTP and/or Sewer System upon the successful execution of the terms and conditions of this Decree. Simultaneously with such

notice, Fostoria will provide written notice of such transfer to the United States and Ohio as provided in Section XVI (Notices and Submissions). In the event of any such transfer of ownership or other interest, Fostoria will not be released from the obligations or liabilities of this Consent Decree unless: (i) the transferee has the financial and technical ability to assume these obligations and liabilities; (ii) the United States and Ohio have agreed to release Fostoria from the obligations and liabilities; (iii) the United States, Ohio, and the transferee have jointly moved to substitute the transferee as the defendant to this Consent Decree; and (iv) the Court has approved the substitution.

III. OBJECTIVES

5. It is the express purpose of the Parties in entering into this Consent Decree to further the objectives of the CWA, as enunciated at Section 101 of the CWA, 33 U.S.C. § 1251, and the objectives of Chapter 6111 of the Ohio Revised Code. All plans, reports, construction, remedial maintenance, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree will have the objective of ensuring Fostoria's full compliance with the CWA and Chapter 6111 of the Ohio Revised Code.

IV. DEFINITIONS

6. Unless otherwise defined herein, terms used in this Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. § 1251 et seq., the regulations promulgated thereunder at 40 C.F.R. Part 122, Chapter 6111 of the Ohio Revised Code, the regulations promulgated under that Chapter, and in Fostoria's NPDES Permit No. 2PD00031*ND and any successor permits. The following definitions shall apply to the terms used in the Consent Decree:

- a. "Calendar Quarter" shall mean the three month period ending on March 31, June 30, September 30, and December 31.
- b. "CBOD" shall mean Carbonaceous Biochemical Oxygen Demand.
- c. "CBOD₅" shall mean a five day test for CBOD.
- d. "Combined Sewer System" shall mean the portion of Fostoria's Sewer System designed to convey municipal sewage (domestic, commercial and industrial wastewaters) and stormwater to Fostoria's WWTP or to a Combined Sewer Overflow ("CSO") Outfall.
- e. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto.
- f. "CSO" or "Combined Sewer Overflow" shall mean any discharge from Fostoria's CSO Outfalls.
- g. "CSO Automatic Sampler and Flow Monitors" or "CSO Samplers" shall mean each of the following American Sigma Samplers that Fostoria owns and operates:

<u>Sampler Serial Number</u>	<u>CSO Location</u>
0498MPC014697	Outfall 004
79911020205001	Outfall 005
79911020205003	Outfall 006

h. "CSO Outfall" shall mean an outfall in the Combined Sewer System from which CSOs are discharged. Fostoria's CSO Outfalls are identified as "overflows" in Fostoria's NPDES Permit and are labeled as follows:

- 1) "CSO Outfall 004" is 2PD00031004 ("Thomas St.");
- 2) "CSO Outfall 005" is 2PD00031005 ("Berkshire Dr.");
- 3) "CSO Outfall 006" is 2PD00031006 ("Parkway Dr.");
- 4) "CSO Outfall 007" is 2PD00031007 ("Vine St.");
- 5) "CSO Outfall 008" is 2PD00031008 ("Circle Dr.).

i. "Date of Lodging" shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Ohio.

j. "Date of Entry" shall mean the date that this Consent Decree is entered by the Clerk of the Court for the United States District Court for the Northern District of Ohio after being signed by a federal district judge.

k. "Day" shall mean a calendar day unless expressly stated to be a working day. When the day a report or other deliverable is due under this Consent Decree falls on a Saturday, Sunday, federal holiday, or legal holiday for Fostoria, Fostoria shall have until the next calendar day that is not one of the aforementioned days for submission of such report or other deliverable.

l. "Dry Weather CSO" shall mean a CSO discharge that occurs at a permitted CSO Outfall when Fostoria's Sewer System is not receiving precipitation-related inflow. The Parties recognize that CSO Outfall 007 can discharge non-precipitation related infiltrating groundwater. Accordingly, for CSO Outfall 007 only, a Dry Weather CSO shall mean a CSO discharge that occurs whenever the Sanitary Sewer System overflows into the Vine Street stormwater relief sewer when the Sewer System is not receiving precipitation-related inflow.

m. "Evaluation of Control Alternatives Plan" shall mean the plan that Fostoria develops pursuant to Part I.C.B.5 of its NPDES Permit.

n. "Fostoria" shall mean the Defendant City of Fostoria, Ohio.

o. "Industrial User" shall mean a discharger of pollutants to Fostoria's Sewer System from a non-domestic source (as regulated by CWA Section 307(b), (c), and (d)).

p. "Infiltration" shall mean water entering the Sewer System from the ground through means that include, but are not limited to, defective pipes and sewer walls, pipe and sewer joints, connections, and manhole walls.

q. "Inflow" shall mean water introduced into the Sewer System from sources including, but not limited to, roof leaders, cellars, basement sump pumps, area drains in yards and driveways, foundation drains, cooling water discharges, drains from springs and swampy areas, cracked or broken manhole covers, cross connections from separate storm sewers, catch basins, storm water, surface run-off, and street wash waters.

r. "Long Term Control Plan" or "LTCP" shall mean the plan that Fostoria develops pursuant to Part I.C.B. of its NPDES Permit and Section V.G. of this Consent Decree.

s. "MGD" or "mgd" shall mean million gallons per day.

t. "NPDES Permit" shall mean Permit No. 2PD00031*ND issued to the City of Fostoria by Ohio EPA, effective on August 1, 2004, and attached hereto as Appendix A, and all revisions, modifications and successors to this NPDES Permit.

u. "Ohio EPA" shall mean the Ohio Environmental Protection Agency and any successor departments or agencies of the State of Ohio.

v. "Paragraph" shall mean a provision of this Consent Decree identified by an arabic number.

w. "Parties" shall mean the United States, the State of Ohio, and the City of Fostoria.

x. "Plaintiffs" shall mean the United States and the State of Ohio.

y. "Primary Overflow Containment Lagoon" shall mean the approximately two million gallon open basin with a synthetic liner located at Fostoria's WWTP.

z. "Quarterly Progress Report" shall mean the reports due on a quarterly basis under Section VI.A of this Consent Decree.

aaa. "Sanitary Sewer System" shall mean the system of sewers intended to carry liquid and water-carried waste to Fostoria's WWTP together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

bbb. "Section" shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

ccc. "Sewer System" shall mean the wastewater collection and transmission system owned or operated by Fostoria designed to collect and convey municipal sewage (domestic, commercial, and industrial) to Fostoria's WWTP or to a Combined Sewer Overflow Outfall. "Sewer System" includes both the "Combined Sewer System" and the "Sanitary Sewer System."

ddd. "TSS" shall mean Total Suspended Solids.

eee. "U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

fff. "Waste Water Treatment Plant" or "WWTP" shall mean the waste water treatment plant owned and operated by the City of Fostoria and located at 1301 Perrysburg Road, Fostoria, Ohio, Wood County.

V. COMPLIANCE MEASURES

A. OPERATION AND MAINTENANCE-RELATED MEASURES

7. CSO Automatic Samplers and Flow Monitors.

a. **Dates of Applicability.** The provisions of this Paragraph will apply commencing on the Date of Entry of this Consent Decree and continuing until the earlier of: (i) the termination of this Consent Decree pursuant to Section XXII; or (ii) the CSO Outfall to which a CSO Automatic Sampler and Flow Monitor corresponds is permanently removed from service.

b. **Operation, Maintenance, and Calibration of CSO Automatic Samplers and Flow Monitors.** Fostoria will properly operate, maintain, and calibrate each CSO Automatic Sampler and Flow Monitor. City personnel will visually inspect each CSO Sampler and corresponding power surge protector no less than one time per week to ensure that each CSO Sampler and surge protector is in proper working order. In addition, Fostoria will retain the services of an outside contractor with technical expertise to provide preventative maintenance and calibration services on Fostoria's CSO Samplers in accordance with the manufacturer's recommended maintenance and calibration program. Fostoria will retain all records of the maintenance and calibration services performed by its outside contractor.

c. **Repair and Replacement.** Fostoria will timely repair any malfunctioning CSO Automatic Sampler and Flow Monitor and will timely replace any malfunctioning power surge protector. Fostoria will retain a log that records the date of any malfunction, the steps that Fostoria takes to repair the malfunctioning part, and the date that the Sampler comes back into full operating service. If Fostoria cannot repair a malfunctioning CSO Sampler within thirty (30)

days of becoming aware of a malfunction, Fostoria will enter into a contract to purchase a replacement automatic sampler and flow monitor for delivery no later than sixty (60) days after the start of the malfunction. As soon as any CSO Automatic Sampler and Flow Monitor fails to operate properly, Fostoria will ensure that sampling in accordance with Part II.E of Fostoria's NPDES Permit is instituted immediately.

8. Operation and Maintenance Manuals.

a. Waste Water Treatment Plant. Fostoria already has developed an operation and maintenance ("O & M") manual for its WWTP. At least one time per year in the first Calendar Quarter of each year commencing with 2007, Fostoria will review and update the WWTP O & M Manual. Fostoria's updates will include, but not be limited to, all necessary and appropriate modifications to reflect significant construction or replacement of major components at the WWTP.

b. Sewer System.

i. By no later than June 30, 2006, Fostoria will submit to U.S. EPA and Ohio EPA a document describing the cleaning and inspection program that Fostoria will undertake in the last six months of 2006 and during calendar year 2007. In particular, Fostoria will prioritize the areas to be cleaned and inspected in the second half of 2006 and in calendar year 2007 in order to coordinate, to the maximum extent practicable, major rehabilitation and replacement work within the Sewer System with the Evaluation of Control Alternatives Plan that Fostoria must submit on January 31, 2008. Fostoria will implement the program it describes in its June 30, 2006 submission.

ii. By no later than March 31, 2007, Fostoria will develop a comprehensive O & M manual for its Sewer System. Fostoria's Sewer System O & M Manual will include, but not be limited to, a sewer cleaning and inspection program that is regularly scheduled and prioritizes cleaning and inspection according to system needs and an ongoing program for rehabilitation and replacement of components of the Sewer System, as necessary.

iii. By no later than April 15, 2007, Fostoria will submit a copy of its complete Sewer System O & M Manual to U.S. EPA and Ohio EPA in either hard copy or electronic form. U.S. EPA and Ohio EPA may submit comments on the Manual, and the Parties will consult with each other regarding the incorporation of comments into the Manual.

iv. At least one time per year in the first Calendar Quarter of each year commencing with 2008, Fostoria will review and update its Sewer System O & M Manual. Fostoria's updates will include, but not be limited to, all necessary and appropriate modifications to reflect significant replacement or rehabilitation of major components of the Sewer System.

9. Sewer System Cleaning. By no later than September 30, 2010, Fostoria will complete the cleaning of 100% of its Sewer System in accordance with the prioritization of needs described in Fostoria's Sewer System O & M Manual. In the period between the Date of Lodging and September 30, 2010, Fostoria will not be required to re-clean areas of the Sewer System that it cleaned in calendar year 2004 through the Date of Lodging.

10. Sewer System Inspection. In accordance with the prioritization of needs described in Fostoria's Sewer System O & M Manual, Fostoria will inspect its Sewer System to achieve at least the following goals: assessing the structural condition of the system; locating and protecting against Inflow and Infiltration; identifying locations where grease and debris

accumulate or where roots intrude into the system; and ensuring that new connections are made correctly. In the Quarterly Progress Report due on January 31 of each calendar year commencing in 2007, Fostoria will provide the following information:

- a. a description of the cleaning and inspections of its Sewer System completed in the prior calendar year;
- b. a description of the rehabilitation and replacement work within its Sewer System started and completed in the prior year; and
- c. For the Quarterly Progress Reports due on January 31, 2007, a description of the rehabilitation and replacement work within its Sewer System that Fostoria anticipates that it will evaluate in the development of its Evaluation of Control Alternatives Plan due under Part I.C.B.5 of Fostoria's NPDES Permit and Paragraph 31 of this Consent Decree.

11. Operation and Maintenance of the Primary Overflow Containment Lagoon at the WWTP. The parties acknowledge and agree that the Primary Overflow Containment Lagoon at the WWTP currently is improperly graded, that any regrading would require removal of the existing liner, and that Fostoria will evaluate the future role of the Primary Overflow Containment Lagoon in the Evaluation of Control Alternatives Plan that Fostoria proposes pursuant to Paragraph 31. Commencing on the Date of Entry of the Consent Decree and continuing until completion of the implementation of the approved measures under the Evaluation of Control Alternatives plan for the Primary Overflow Containment Lagoon, Fostoria will operate and maintain the Primary Overflow Containment Lagoon so as to maximize the Lagoon's ability to stabilize flows within the WWTP during Combined Sewer Overflows. The measures that Fostoria will take will include, but not be limited to, practices to (i) ensure the physical integrity of the liner; (ii) eliminate any build-up of sludge, vegetation, and debris on the Lagoon bottom; and (iii) prevent the contents of the Lagoon from becoming septic.

12. Elimination of all Lime Slurry Discharges from the Fostoria Water Plant. By no later than June 30, 2006, Fostoria will permanently seal all connections between the Fostoria Water Plant and Fostoria's Sewer System that enable the Water Plant to discharge lime slurry into the Sewer System. Commencing on June 30, 2006, Fostoria is prohibited from discharging lime slurry from its Water Plant into its Sewer System. In the first Quarterly Progress Report due under this Consent Decree, Fostoria will certify completion of the permanent seal(s) required by this Paragraph.

B. SYSTEM CHARACTERIZATION, INCLUDING FLOW MONITORING

13. Installation of Rain Gauges.

- a. WWTP Rain Gauge. Fostoria will continue to properly operate and maintain a rain gauge at its WWTP in order to secure representative precipitation data.
- b. Additional Rain Gauges. Fostoria will continue to properly operate and maintain two additional rain gauges at representative locations away from the WWTP to generate representative precipitation data for the Sewer System.

14. Sewer System Mapping/Verification. Fostoria has validated the alignment, slope and elevation of all sewers that will be modeled as part of Fostoria's development of an LTCP, has identified the configuration and elevation of all weirs, gates or regulators where flows within the Sewer System can be diverted or detained (including all CSO Outfalls), and has verified pump station performance by field testing. No less than one time per year, Fostoria will update its Sewer System maps.

15. Influent Flow Monitoring at the WWTP. Fostoria will continue to properly operate and maintain an influent flow monitor that continuously records flow into the WWTP.

Fostoria will use the information provided by the influent flow monitor to support the development of Fostoria's LTCP.

16. Interim Measures to Improve Effluent Monitoring at the WWTP. In the first Quarterly Progress Report due under this Consent Decree, Fostoria will identify the steps it has taken to try to improve WWTP effluent monitoring. As part of the Evaluation of Control Alternatives Plan that Fostoria submits pursuant to Paragraph 31, Fostoria either will certify that the measures that it took under this Paragraph resulted in long-term, accurate and reliable final effluent monitoring or will propose a plan and schedule for the installation of an accurate and reliable final effluent monitor.

17. Dry Weather Monitoring Report. By no later than July 31, 2006, Fostoria will submit to U.S. EPA and Ohio EPA a report that reviews all instances where a discharge from a CSO Outfall was recorded or visually observed on days when no precipitation was recorded at the WWTP for that date. The Report will cover the period between April 1, 2004, through June 30, 2006. The Dry Weather Monitoring Report will include, but not be limited to, an evaluation of: (i) the likely causes of the reported or observed discharges; (ii) whether the likely causes of the reported or observed discharges have been corrected; (iii) the role that Fostoria's CSO monitoring equipment played in the reported or observed discharges; and (iv) the physical characteristics of each regulator (such as low freeboard dam) that may have increased the likelihood of the reported or observed discharges. The Dry Weather Monitoring Report will identify the actions that Fostoria implemented or will implement to cease all such reported or observed discharges, and, if applicable, a schedule for implementation. Fostoria will immediately commence implementation of the Report's recommendations under the schedule

proposed in the Report. U.S. EPA and/or Ohio EPA may submit comments on the Dry Weather Monitoring Report, and the Parties will consult with each other regarding the incorporation of any comments into the Report and, if applicable, its schedule of implementation.

18. Combined Sewer System Characterization, Monitoring, and Modeling Report.

Fostoria previously has submitted a Combined Sewer System Characterization, Monitoring, and Modeling Report to U.S. EPA and Ohio EPA pursuant to Part I,C.B.2. of Fostoria's NPDES Permit. This Report is subject to the review and approval of U.S. EPA and Ohio EPA. The Report will be reviewed based upon whether it: (i) sets forth the results of the characterization and verification work done pursuant to Paragraph 14; (ii) proposes a monitoring program consistent with the requirements of Part I,C.B.2. of Fostoria's NPDES Permit; (iii) proposes a hydraulic model to accurately evaluate the runoff generated by Fostoria's hydrology and describes the actual hydraulic capacities of Fostoria's sewers and the dry weather and wet weather characteristics of Fostoria's CSO Outfalls; (iv) proposes to calibrate and verify the hydraulic model using adequate rainfall and flow monitoring data (which data must include representative flows at locations upstream of the diversion structures, in the interceptors, and at the CSO Outfalls); and (v) sets forth an implementation schedule for the calibration and verification of the hydraulic model. Approval will be done in accordance with Section VI.C. of this Consent Decree.

C. ELIMINATION/REDUCTION OF INFLOW

19. By no later than December 31, 2006, Fostoria will develop and commence implementation of an ongoing program to identify and eliminate sources of Inflow into the Sewer System. Fostoria will consider the following measures in the development of this program:

identification and elimination of roof leaders and downspout connections leading to combined sewers; redirection of area and foundation drains and basement sump pumps; and elimination of unauthorized and/or illegal cross connections. Commencing with the Quarterly Progress Report due on January 31, 2007, Fostoria will describe the steps it has taken and will take in compliance with the provisions of this Paragraph.

D. POLLUTION PREVENTION PROGRAM

20. Street Sweeper. Fostoria will operate the street sweeper that Fostoria purchased in 2005 on no less than a weekly basis from March 1 to November 1 of each year, so as to minimize the introduction of pollution from city streets into the Sewer System. Fostoria will comply with the manufacturer's recommended maintenance program for the street sweeper to ensure maximum performance and minimal downtime.

21. Commencing with the Quarterly Progress Report due on January 31, 2007, Fostoria will identify and describe the measures it takes or supports to prevent pollution, including but not limited to, the street sweeping program, seasonal leaf pickups, litter control measures, recycling, household hazardous waste disposal and used motor oil collection. Fostoria will include an analysis of the appropriateness of the current level of action and support that Fostoria provides.

E. PRETREATMENT/INDUSTRIAL USERS

22. Evaluation of Industrial Users' Discharges that May Contribute to CSOs. In the Quarterly Progress Report due on October 31, 2006, Fostoria will: (i) identify each point of Industrial User ("IU") discharge to the Sewer System and each CSO Outfall that is downstream of each IU discharge point; (ii) evaluate whether or not each IU discharges waste water in batches

("batch discharges"); (iii) set forth recommendations for reducing IU impact on CSOs: the recommendations will consider prohibiting IUs from discharging in batches during wet weather and modifying existing IU permits at the time of their renewal to prohibit batch discharges during wet weather; and (iv) provide an implementation schedule, if applicable. Fostoria will immediately commence implementation of the recommendations under the schedule proposed in the report. U.S. EPA and/or Ohio EPA may submit comments on the evaluation, recommendations, and schedule, if any, in the Quarterly Progress Report, and the Parties will consult with each other regarding the incorporation of these comments into Fostoria's program.

23. Investigation of Causes of Non-Compliance.

a. Fostoria will comply with the provisions of Part III.12 of its NPDES Permit regarding non-compliance notification. If, within five days of the date of the discovery of an effluent exceedance(s), Fostoria is unable to complete an investigation of the causes and/or is unable to complete an identification of the steps it has taken to reduce, eliminate, and/or prevent the recurrence of the exceedance(s), Fostoria will continue its evaluation thereafter in a timely manner taking into account the scope and complexity of the exceedance(s) under investigation. If any Industrial User and/or septage hauler is found to have caused or contributed to effluent exceedance(s) or interfered with WWTP operations, Fostoria will take timely, appropriate, and effective enforcement action to resolve the non-compliance. Nothing in this Paragraph is intended to modify or alter the dates that Fostoria is required to make oral or written notifications under Part III.12 of its NPDES Permit.

b. Fostoria will provide to U.S. EPA copies of all written notifications and reports that Fostoria is required to submit to Ohio EPA under Part III.12 of its NPDES Permit.

24. Implementation of Measures to Minimize Discharges of New Industrial Users on the Sewer System during Wet Weather. For the life of this Consent Decree, prior to issuing a permit to a new Industrial User, Fostoria will evaluate the potential permittee's discharges to the Sewer System in accordance with the provisions of Paragraph 22. Fostoria will issue permit conditions sufficient to ensure that new Industrial Users do not contribute to CSOs, including considering prohibiting batch discharges during wet weather. Fostoria will develop minimization measures based, among other things, on the findings and conclusions Fostoria reached in its evaluations under Paragraph 22.

F. NPDES PERMIT COMPLIANCE

25. No Dry Weather CSOs. Immediately upon the Date of Lodging of this Consent Decree, Fostoria is prohibited from any and all Dry Weather CSOs.

26. Verification of Discharges from CSO Outfall 007.

a. Commencing in the first full month after Entry of this Consent Decree and continuing for a period of twelve months thereafter, Fostoria will verify one time per month during dry weather that the discharge from CSO Outfall 007 does not contain sanitary wastewater. For purposes of this Paragraph, verification "during dry weather" cannot take place sooner than 48 hours after a CSO.

b. One-Step Procedure. Except as provided in Subparagraph 26.c below, Fostoria will evaluate whether the dry weather discharge from CSO Outfall 007 contains sanitary wastewater by testing for fecal coliform. If the fecal coliform test results exceed 5000 counts/100ml, the discharge will be considered a Dry Weather CSO. Fostoria must report this

Dry Weather CSO in accordance with Subparagraph 26.d, and stipulated penalties pursuant to Paragraph 66 will apply.

c. Optional Procedure. In lieu of utilizing the procedure under Subparagraph 26.b, Fostoria, at its option, may undertake a two part procedure to verify the nature of the discharges from CSO Outfall 007. Fostoria may first undertake a fluorescence/optical brightener test on the discharge from CSO Outfall 007. If the test results are negative, then the discharge will not be considered a Dry Weather CSO. If the test results are positive, Fostoria will test for fecal coliform within two hours of the positive optical brightener test results. If the fecal coliform test results exceed 5000 counts/100ml, the discharge will be considered a Dry Weather CSO. Fostoria must report this Dry Weather CSO in accordance with Subparagraph 26.d, and stipulated penalties pursuant to Paragraph 66 will apply. Fostoria will perform the fluorescence/optical brightener test using the methods and procedures identified in Fostoria's quality assurance procedures included within its Operation and Maintenance Manual. In any given month, Fostoria may utilize only one of the two possible verification procedures for purposes of determining the applicability of stipulated penalties.

d. Report. For any positive test result under Subparagraphs 26.b or 26.c, Fostoria will investigate the cause(s) and will submit a report of the cause(s) to U.S. EPA and Ohio EPA as soon as practicable after the positive test result, taking into account the complexity of the evaluation necessary to identify the cause(s). In the report, Fostoria will identify the corrective measures it has taken or will take as expeditiously as practicable to prevent a recurrence of the cause(s), unless Fostoria demonstrates, and U.S. EPA and Ohio EPA concur, that the test result under Subparagraphs 26.b or 26.c was a false positive. Fostoria may undertake

any form of testing it deems necessary for purposes of evaluating the cause(s) of a positive test result and verifying that the cause(s) has (have) been corrected. Stipulated penalties under Paragraph 66 will not apply to any testing done to determine the cause(s) or verify the effectiveness of corrective measures.

27. Compliance with All Final NPDES Effluent Limitations Except for TSS and CBOD₅. Immediately upon the Date of Lodging of this Consent Decree, Fostoria will comply with all final effluent limits set forth in its NPDES Permit, except as specified in Paragraph 28.

28. Compliance with Interim Effluent Limitations for TSS and CBOD₅.

a. Interim Limits: Duration of Applicability. During the periods when the conditions in Paragraph 28.c. and 28.d. are satisfied, the interim limits for CBOD₅ and TSS will apply from the Date of Lodging of this Consent Decree until the earlier of: (i) the completion of the implementation of measures set forth in Fostoria's Evaluation of Control Alternatives Plan designed to eliminate TSS and CBOD₅ effluent limit violations; or (ii) the effective date of the NPDES Permit that supercedes the NPDES Permit that became effective for Fostoria on August 1, 2004.

b. Interim Limits. Interim limits for CBOD₅ and TSS are as follows:

	<u>Concentration (mg/l)</u>		<u>Loading (kg/day)</u>	
	<u>Weekly</u>	<u>Monthly</u>	<u>Weekly</u>	<u>Monthly</u>
CBOD ₅	18.7	12.5	585	391
TSS	21.7	14.5	680	455

c. Interim Limits: Time Periods When Interim Concentration Limits Are in Effect. The interim weekly and monthly CBOD₅ and TSS concentration limits will be in effect when all of the following conditions are met:

- i. At least one sample used in determining the reported weekly or monthly concentration is taken when flow to the WWTP exceeds 8.25 MGD (as measured on a calendar day and not instantaneously); and
- ii. For each such day when flow to the plant exceeds 8.25 MGD, Fostoria operates all treatment units at the WWTP at or near full capacity; and
- iii. For each such day when flow to the plant exceeds 8.25 MGD, Fostoria uses best efforts to maximize flows to the WWTP.

d. Interim Limits: Time Periods When Interim Loading Limits Are in Effect.

The interim weekly and monthly CBOD₅ and TSS loading limits will be in effect when all of the following conditions are met:

- i. At least one sample used in determining the reported weekly or monthly loading is taken when flow to the WWTP exceeds 8.25 MGD (as measured on a calendar day and not instantaneously); and
- ii. For each such day when flow to the WWTP exceeds 8.25 MGD, Fostoria operates all treatment units at the WWTP at or near full capacity; and
- iii. For each such day when flow to the WWTP exceeds 8.25 MGD, Fostoria uses best efforts to maximize flows to the WWTP.

Due to the manner in which interim limits were determined, and in an effort to encourage Fostoria to maximize flow through its WWTP during wet weather events, Fostoria will be entitled to exclude all data points that were generated during any days in which flow to the WWTP exceeded 10 MGD in calculating weekly and monthly loadings for purposes of determining compliance with the interim limits.

e. Stipulated Penalties. Fostoria will not be liable for stipulated penalties for violations of the weekly and monthly CBOD₅ and TSS concentration and loading limits set forth

in Fostoria's NPDES Permit when the interim limits set forth in Paragraph 28.b are in effect.

The sampling frequency methodology for CBOD₅ and TSS contained in Fostoria's NPDES Permit will apply to both the interim CBOD₅ and TSS limits set forth in Paragraph 28.b and to the CBOD₅ and TSS limits set forth in Fostoria's NPDES Permit.

f. Reporting. Nothing in Paragraph 28 will be construed to exempt Fostoria from the monitoring requirements set forth in its NPDES Permit, and Fostoria must report all monitoring and sampling data, even if that data is properly excluded from calculating loadings for purposes of this Consent Decree. In its monthly operating reports, Fostoria must identify all data points that it excludes under Paragraph 28.d., and must certify that the conditions for exclusion are met. Fostoria will submit a hard copy of the monthly swimware data (monthly operating report), together with information that supports the conclusion that the conditions for exclusion are met, to Ohio EPA, Northwest District Office, Division of Surface Water, and to U.S. EPA, no later than fifteen (15) days after the month of the occurrence.

29. Compliance with Mercury Effluent Limitations. If Fostoria maintains compliance with its NPDES effluent limitations for mercury for a twelve month period between September 1, 2005, and August 31, 2006, Fostoria will not be required to implement any actions to investigate the causes of prior mercury exceedances. If Fostoria violates its mercury effluent limitations at any time in that twelve month period, Fostoria will undertake the following actions commencing no later than the second full month after Fostoria exceeds its effluent limitations for mercury:

- a. Undertake a six month study of the possible causes of: (i) the mercury exceedance(s) that resulted in having to take action under this Paragraph; and (ii) the mercury exceedances that occurred in the three year period prior to the exceedance(s) that required action under this Paragraph;

- b. Require that each septage hauler sign a certification, under penalty, regarding whether the septage being unloaded is "domestic only" or "other than domestic only" (e.g., mixed domestic and industrial, industrial only, etc.);
- c. For septage that is certified as "other than domestic only," institute and publicize a program to sample and analyze 100% of these septage loads for a twelve month period. Under the program, Fostoria will: (i) analyze all samples for pH, unusual odors or colors before acceptance; (ii) retain samples of each septage load until receipt of that month's effluent and sludge sampling results; and (iii) analyze all such loads for mercury using the "low level" test (U.S. EPA Method 1631 (Revision E)); and
- d. For septage that is certified as "domestic only," institute and publicize a program to randomly sample these loads for mercury. Fostoria will submit its proposal for a random sampling program to U.S. EPA and Ohio EPA no later than the second full month after Fostoria exceeds its effluent limitations for mercury. Fostoria will implement the random sampling program as proposed unless and until U.S. EPA and Ohio EPA provide comments that require Fostoria to modify its random sampling program.

In implementing the sampling program required under Paragraph 29.b - d, Fostoria will undertake all necessary measures to ensure full cost recovery and penalties from any hauler who disposes of septage containing mercury.

G. LONG-TERM CONTROL PLAN

30. Submission of Long-Term Control Plan. By no later than the dates set forth in Fostoria's NPDES Permit at Part I,C.B.7, Fostoria will submit to U.S. EPA and Ohio EPA each of the elements that constitute Fostoria's Long-Term Control Plan under Part I,C.B.1 through 6 of Fostoria's NPDES Permit. Fostoria will develop its LTCP in accordance with its NPDES Permit requirements at Part I,C.B. and with the following U.S. EPA Guidances: "Combined Sewer Overflows Guidance for Long-Term Control Plan;" "Combined Sewer Overflows Guidance for Financial Capability Assessment and Schedule Development;" "Guidance:

Coordinating Combined Sewer Overflow (CSO) Long-Term Planning with Water Quality Standards Reviews.” The requirements of Fostoria’s NPDES Permit at Part I,C.B.1 through 7 are incorporated herein by reference and are enforceable under this Consent Decree. Fostoria is required to obtain U.S. EPA approval of the Combined Sewer System Characterization, Monitoring and Modeling Report (described at NPDES Permit Part I,C.B.2 and Paragraph 18 of this Consent Decree) and the Evaluation of Control Alternatives Plan (described at NPDES Permit Part I,C.B.5 and Paragraph 31). Fostoria must obtain Ohio EPA approval of all six plans listed in Fostoria’s NPDES Permit at Part I,C.B.

31. Submission of Evaluation of Control Alternatives Plan. By no later than January 31, 2008, Fostoria will submit to U.S. EPA and Ohio EPA for approval an Evaluation of Control Alternatives Plan, which will include all of the elements set forth at Part I.C.B.5 of Fostoria’s NPDES Permit, including but not limited to an implementation schedule. In addition, Fostoria’s Evaluation of Control Alternatives Plan will:

- a. Provide for the removal of the trickling filters at the WWTP;
- b. Either certify that the measures that it took under Paragraph 16 resulted in long-term, accurate and reliable final effluent monitoring or propose a plan and schedule for the installation of an accurate and reliable final effluent monitor;
- c. Set forth a schedule for the implementation of a study to characterize floatables and solids;
- d. Identify whether Fostoria will continue to utilize the Primary Overflow Containment Lagoon, and if so, set forth a schedule for revamping the Lagoon;
- e. Evaluate the permanent closure of the apertures that have the potential to overflow into the Vine St. stormwater relief sewer in order to render CSO Outfall 007 incapable of discharging anything other than stormwater;

- f. Clearly identify the steps necessary to achieve compliance with final effluent limits for TSS and CBOD₅; and
- g. Set forth a post-construction monitoring plan.

32. Schedule for Completion of the Construction Planned under the Evaluation of Control Alternatives Plan. Fostoria will develop the implementation schedule in its Evaluation of Control Alternatives Plan with the goal of completing all required construction as expeditiously as possible but in no event later than December 31, 2025. The implementation schedule will include, at a minimum, a construction start date, a construction completion date, one additional interim milestone between the beginning and ending of construction that approximates 50% project completion (based upon the estimated completion date within the general contractor's contract), and the date that all aspects of the plan are expected to be fully operational. Fostoria also will provide a proposed chart (sometimes referred to as a "Gantt chart") that identifies the schedule for beginning and completing all major tasks in the Evaluation of Control Alternatives Plan. To the extent applicable, Fostoria will include in this proposed chart the date of the submission of complete and approvable applications for all necessary permits to install. The proposed chart also will include schedules for how Fostoria expects to obtain the funds necessary to complete construction in accordance with the Evaluation of Control Alternatives Plan. Nothing in this Paragraph will limit the rights of the Parties to agree to modifications of the dates initially set forth in the approved schedule of implementation.

33. Implementation of Evaluation of Control Alternatives Plan. Upon approval by Plaintiffs, Fostoria will implement the approved Evaluation of Control Alternatives Plan in accordance with the schedule therein.

34. Post-Construction Monitoring. Consistent with the schedule in Fostoria's approved Evaluation of Control Alternatives Plan, Fostoria will undertake post-construction monitoring adequate to verify compliance with water quality standards and to ascertain the effectiveness of Fostoria's CSO controls.

VI. REPORTING AND PLAINTIFFS' REVIEW AND APPROVAL PROCESS

A. REPORTS

35. On a quarterly basis on January 31, April 30, July 31, and October 31, of each quarter commencing with the first quarter after Entry of this Consent Decree and continuing until termination, Fostoria will submit to U.S. EPA and Ohio EPA a progress report regarding the implementation of the requirements of this Decree in the previous Calendar Quarter ("Quarterly Progress Report"). The Quarterly Progress Report will include at a minimum:

- a. A description of the projects and activities conducted during the reporting period to comply with the requirements of this Decree;
- b. A summary of all problems or potential problems encountered during the reporting period, and the actions taken to rectify the problems;
- c. A summary of all contacts with U.S. EPA and Ohio EPA during the reporting period, including but not limited to the date deliverables under this Decree were sent to U.S. EPA and Ohio EPA;
- d. A statement of any exceedances of NPDES permit limitations.

Fostoria will retain all data, documents, plans, records, and reports that relate to matters performed by Fostoria pursuant to this Decree for the term of this Decree. This Paragraph does not limit or affect any duty of obligation of Fostoria to maintain records or information required by its NPDES Permit.

B. CERTIFICATION AND ADMISSIBILITY

36. All reports required to be submitted by Fostoria pursuant to this Consent Decree will contain a certification signed by a responsible official of Fostoria. The certification will read as follows:

"I certify that the information contained in or accompanying this (submission/document) is true, accurate and complete. As to (the/those) identified portion(s) of this (submission/document) for which I cannot personally verify (its/their) truth and accuracy, I certify as the official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this is true, accurate and complete."

37. Fostoria will not object to the admissibility into evidence of any information provided under the requirements of this Consent Decree or its NPDES Permit in any proceeding to enforce this Consent Decree.

C. PLAINTIFFS' REVIEW AND APPROVAL OF THE REPORT AND PLAN PREPARED PURSUANT TO PARAGRAPHS 18 AND 31

38. For the Combined Sewer System Characterization, Monitoring, and Modeling Report and the Evaluation of Control Alternatives Plan for which Fostoria must obtain U.S. EPA's and Ohio EPA's approval pursuant to Paragraphs 18 and 31, respectively, Plaintiffs may: (i) approve the report/plan, in whole or in part; (ii) disapprove the report/plan, in whole or in part; (iii) approve the report/plan upon specified conditions, directing that Fostoria modify its submission; or (iv) any combination of the above. Within 60 days following receipt of a notice of disapproval or direction to modify the submission from Plaintiffs (or within a longer time if set forth in the notice), Fostoria will submit a modified plan that addresses Plaintiffs' concerns. Any stipulated penalties applicable to the submission will accrue during the 60-day period, or such additional period as Plaintiffs and Fostoria may agree to in writing, but will not be payable

unless the resubmission(s) is (are) disapproved in whole or in part due to a defect identified in Plaintiffs' response to Fostoria's earlier plan submission.

39. Notwithstanding the receipt of a notice of disapproval pursuant to the preceding Paragraph, Fostoria will proceed, if directed by Plaintiffs, to take any action required by any nondeficient portion of Fostoria's submission, if such action can be undertaken independent of the deficient portion of Fostoria's submission. Implementation of any nondeficient portion of a submission will not relieve Fostoria of any liability for stipulated penalties.

40. In the event that a resubmitted plan/report or portion thereof is disapproved in whole or in part or approved with conditions by Plaintiffs, Plaintiffs may again require Fostoria to correct the deficiencies or conditions in accordance with the preceding Paragraphs. Plaintiffs also retain the right to modify or develop any disapproved or conditioned portion of the resubmitted plan or report. Fostoria will implement any such plan/report as modified or developed by Plaintiffs, subject only to Fostoria's right to invoke the dispute resolution procedures set forth in Section XIX.

41. If upon resubmission, a plan or report is disapproved or modified in whole or in part by Plaintiffs due to a material defect previously identified and not corrected, Fostoria will be deemed to have failed to submit its plan or report timely and adequately unless Fostoria invokes the dispute resolution procedures set forth in Section XIX, and (i) Plaintiffs either agree to modify their earlier position; or (ii) the Court fails to adopt Plaintiffs' position. If Plaintiffs' disapproval or modification is upheld by the Court, stipulated penalties will accrue for such violation from the date on which the initial submission was originally required. Whether Plaintiffs disapprove of Fostoria's submissions or approve the submissions with modifications

will not affect the burden of proof or the standard of review set forth in Section XIX of this Consent Decree.

D. MISCELLANEOUS

42. Upon their approval by Plaintiffs, the Combined Sewer System Characterization, Monitoring, and Modeling Report submitted pursuant to Paragraph 18 and the Evaluation of Control Alternatives Plan developed pursuant to Paragraphs 31 and 32 of this Consent Decree will be incorporated herein as part of this Consent Decree and enforceable hereunder.

VII. FUNDING

43. In evaluating the financial impact of implementing any of the alternatives for the Evaluation of Control Alternatives Plan required pursuant to Paragraph 31 and Fostoria's NPDES Permit, Fostoria will evaluate not only residential sewer rates but also possible alternative funding mechanisms, including, but not limited to, commercial and industrial user fees and rate structures, bond revenues, and grant and loan availability.

44. By its signature on this Consent Decree, Fostoria certifies that, as of the date of its signature, its sewer rates are set forth in Ordinance No. 2005-19 (Appendix B to this Consent Decree), and that the rates set forth therein represent the rates in effect on the date of Fostoria's signature.

45. In order for U.S. EPA and Ohio EPA to consider the economic feasibility of the alternatives evaluated and the alternatives proposed for implementation in any plan submitted pursuant to this Consent Decree, on January 31, 2008, Fostoria will provide a certified statement regarding the then-current sewer rates (exclusive of water), a certification of the average annual sewer bill for a household in Fostoria, and the three previous years of the City's Annual Financial

Reports. In addition, Fostoria will provide any other information relevant to economic feasibility that U.S. EPA or Ohio EPA may request.

46. Compliance with the terms of this Consent Decree by Fostoria is not conditioned on the receipt of federal or state grant or loan funds. Failure to comply is not excused by the lack of federal or state grant or loan funds or by the processing of any applications for the same.

VIII. CIVIL PENALTY

47. No later than thirty (30) days following entry of this Consent Decree, Fostoria will pay to the United States a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) in full satisfaction of the United States' claims for civil penalties alleged in its Complaint. Payment will be made by certified or cashier's check made payable to the "United States Department of Justice" referencing USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case name and case number assigned to this matter by the United States District Court for the Northern District of Ohio. Fostoria will send the check to:

United States Attorney's Office
Financial Litigation Unit
Four Seagate, Third Floor
Toledo, Ohio 43604

In addition, Fostoria will provide notice of payment, referencing USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case name and case number, to DOJ and Region 5 of U.S. EPA, as provided in Section XVI ("Notices and Submissions").

48. No later than thirty (30) Days following entry of this Decree, Fostoria will pay to the State of Ohio a civil penalty in the amount of Fifteen Thousand Dollars (\$15,000) in full

satisfaction of Ohio's claims for civil penalties alleged in its Complaint. Payment will be made by cashier's check or certified funds, payable to "Treasurer, State of Ohio," and will be sent to:

Mark Lemmon, Paralegal
Attorney General's Office
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215-3400

Payment may also be made by electronic transfer to the designated accounts pursuant to instructions sent by Ohio upon request by Fostoria. A copy of the check and transmittal letter or other evidence of payment will also be sent to the Ohio Attorney General's Office and Ohio EPA, as provided in Section XVI ("Notices and Submissions").

49. Fostoria will pay interest on any unpaid balance of the civil penalty owed to the United States, which will begin to accrue at the end of the 30-day period described above, at the rate established by the Department of the Treasury under 31 U.S.C. § 3717. Fostoria will pay interest on any unpaid balance of the civil penalty owed to Ohio, which will begin to accrue at the end of the 30-day period described above, at the rate of ten (10) percent, pursuant to Ohio Revised Code § 1343.03.

50. Upon entry of this Decree, this Decree will constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States and the State of Ohio will be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

IX. STIPULATED PENALTIES

51. Fostoria will pay to the United States and the State of Ohio stipulated penalties as set forth in Paragraphs below for each day Fostoria fails to satisfy the requirements listed therein.

52. For each failure to visually inspect each CSO Sampler in accordance with the requirements of Paragraph 7.b, \$25 per day of delay.

53. For failure to retain the services of an outside contractor in accordance with the requirements of Paragraph 7.b, \$75 per day for each day that a contract is not in place.

54. For each failure to comply with the repair and replacement requirements of Paragraph 7.c, \$100 per day of delay.

55. For failure to timely complete the cleaning of the Sewer System in accordance with the requirements of Paragraph 9:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-60	\$ 50
Days 61 - 120	\$ 100
Over 120 days	\$ 200

56. For failure to inspect the Sewer System in accordance with the prioritization of needs set forth in the Sewer System O&M Manual, as required by Paragraph 10:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-60	\$ 50
Days 61 - 120	\$ 100
Over 120 days	\$ 200

57. For failure to operate and maintain the Primary Overflow Containment Lagoon in accordance with the requirements of Paragraph 11, \$150 per day.

58. For failure to permanently seal all connections between the Fostoria Water Plant and Fostoria's Sewer System as required by Paragraph 12, \$1,000 per day of delay.

59. For failure to operate and maintain rain gauges as required by Paragraph 13, \$300 per day of non-compliance.

60. For failure to annually update the Sewer System mapping as required by Paragraph 14:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 100
Days 31 - 60	\$ 200
Over 60 Days	\$ 400

61. For failure to operate and maintain an influent flow monitor as required by Paragraph 15:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 100
Days 31 - 60	\$ 200
Over 60 Days	\$ 400

62. For failure to timely commence implementation of a program to identify and eliminate sources of Inflow into the Sewer System, as required by Paragraph 19:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1 - 60	\$ 100
Days 61 - 120	\$ 200
Over 120 Days	\$ 400

63. For failure to implement the pollution prevention measures required by Paragraphs 20 and 21, \$25 per day.

64. For failure to timely evaluate Industrial Users' discharges that may contribute to CSOs, as required by Paragraph 22, or for failure to implement the measures required by

Paragraph 24:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1 - 60	\$ 100
Days 61 - 120	\$ 200
Over 120 days	\$ 400

65. For Dry Weather CSOs, except for Dry Weather CSOs from CSO Outfall 007, \$4,000 per 24-hour period.

66. For Dry Weather CSOs from CSO Outfall 007, \$6,000 per positive test result under Paragraph 26.b or 26.c.

67. Non-Compliance with Effluent Limitations

a. This Paragraph will apply to: (i) any failure to comply with the effluent limitations in Fostoria's NPDES Permit except that, during the period of the applicability of the interim weekly and monthly CBOD5 and TSS concentration and loading limitations set forth in Paragraph 28 of this Consent Decree, stipulated penalties for violations of the NPDES Permit limitations for those parameters will not apply; (ii) any failure to comply with the weekly and monthly CBOD5 and TSS interim concentration and loading limitations set forth in Paragraph 28 of this Consent Decree, for as long as those interim limitations are applicable; and (iii) any failure to comply with the weekly and monthly CBOD5 and TSS concentration and loading limitations set forth in Fostoria's NPDES Permit when Fostoria fails to satisfy the conditions set forth in Paragraph 28.c and d.

- b. Daily Limitations. For each exceedance of a daily effluent limitation,

Fostoria will pay \$350.00 per exceedance.

- c. Weekly Limitations. For each exceedance of a weekly effluent limitation,

Fostoria will pay:

<u>Period of Noncompliance</u>	<u>Penalty per exceedance of the Weekly Average</u>
i. For the first exceedance of a parameter	\$ 500.00
ii. For the second exceedance of the same parameter	\$ 1,000.00
iii. For the third and subsequent exceedances of the same parameter	\$ 1,500.00

- d. Monthly Limitations. For each exceedance of a monthly effluent

limitation, Fostoria will pay:

<u>Period of Noncompliance</u>	<u>Penalty per Exceedance of the Monthly Average</u>
i. For the first exceedance of a parameter	\$ 1,000.00
ii. For the second exceedance of the same parameter	\$ 2,500.00
iii. For the third and subsequent exceedances of the same parameter	\$ 5,000.00

- e. For purposes of calculating stipulated penalties pursuant to this Paragraph,

an exceedance of a weekly effluent limitation will constitute one exceedance, not seven

exceedances; an exceedance of a monthly effluent limitation will constitute one exceedance, not

thirty exceedances.

f. For purposes of calculating stipulated penalties pursuant to this Paragraph, a single operational upset which results in simultaneous daily effluent exceedances for more than one pollutant parameter will be treated as a single exceedance. However, each day on which a daily limitation is exceeded will be treated as a separate exceedance even if the exceedances arise from a single operational upset. Liability for stipulated penalties for weekly and monthly effluent limitations is not affected by the existence of daily maximum exceedance(s) for different parameters that may have arisen from the same operational upset.

g. For purposes of calculating stipulated penalties pursuant to this Paragraph, in overlapping periods where weekly and monthly limitations are exceeded for the same parameter, Fostoria will be liable, upon demand, for stipulated penalties for either the weekly exceedance(s) or the monthly exceedance, whichever is greater. In overlapping periods where daily and monthly effluent limitations are exceeded for the same parameter, Fostoria will be liable, upon demand, for stipulated penalties for either the daily or the monthly exceedance, whichever is greater.

h. For purposes of calculating stipulated penalties pursuant to this Paragraph, and consistent with the definition of "weekly concentration" in Part III.1 of Fostoria's NPDES Permit, a weekly concentration will mean the arithmetic average of all the determinations of the daily concentration limitation made during the seven-day period, except that coliform bacteria limitations compliance will be determined using the geometric mean. Consistent with the definition of "monthly concentration" in Part III.1 of Fostoria's NPDES Permit, a monthly concentration will mean the arithmetic average of all of the determinations of the daily limitation made during the calendar month, except that coliform bacteria limitations compliance will be

determined using the geometric mean. The “weekly period” will be calculated based on discrete, consecutive, non-overlapping seven day periods composed only of days within the same calendar month. The “monthly period” will be calculated based on a calendar month.

i. For purposes of calculating stipulated penalties pursuant to this Paragraph, the first exceedance of a parameter will be subject to the penalty set forth in the same row as the “first exceedance;” the second exceedance of the same parameter will be subject to the penalty set forth in the same row as the “second exceedance;” and three or more exceedances of the same parameter will be subject to the penalty set forth in the same row as the “third and subsequent exceedances.” Thus, for example, if Fostoria exceeds its monthly average effluent limitations for copper for two months, the total penalty would be \$3,500 ($\$1,000 + \$2,500$); the penalty would not be \$5,000 ($2 \times \$2,500$). (This example assumes that the stipulated penalties for the monthly exceedances are greater than the stipulated penalties for any weekly exceedances that might have occurred during that two month period. See Subparagraph 67.g.)

j. For purposes of calculating stipulated penalties for weekly or monthly limitations pursuant to this Paragraph, exceedances for the same parameter will be considered continuous for that parameter -- and the number of exceedances will cumulate -- until there exists a three-month period of compliance for that parameter. Thus, for example, if Fostoria exceeds its monthly limitation for copper in Month 1, Month 2, Month 4, Month 5, Month 8, and Month 12, the exceedances occurring in Months 1-8 will cumulate because no three month period of compliance exists. Thus, the stipulated penalties for Months 1-8 would be \$18,500 [$\$1000 + \$2,500 + (3 \times \$5,000)$]. The stipulated penalty for Month 12 would be \$1,000 because a three month period of compliance intervened between Month 8 and Month 12. For effluent parameters

for which discharge limitations are applicable only during certain months of the year, the months during which no limitations are applicable will not be included in calculating the total number of months of compliance.

68. If Fostoria is required to implement the program under Paragraph 29, for each violation of a requirement of that Paragraph, \$50 per day.

69. For failure to timely submit the plans, reports, or information required by Paragraphs 8.a, 8.b.i, 8.b.iv, 10, 12, 16, 19, 21, 22, 23, 28.f, 35, but if the due date falls on a holiday or weekend, the due date will be the following business day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 50
Days 31 - 60	\$ 150
Over 60 Days	\$ 300

70. For failure to timely submit the plans or reports required by Paragraphs 8.b.ii, 17, 30 and 31, but if the due date falls on a holiday or weekend, the due date will be the following business day:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$ 150
Days 31 - 60	\$ 300
Over 60 Days	\$ 500

71. Except where Paragraph 70 applies, for failure to comply with the requirements set forth in Paragraphs 31, 32, 33, 34:

<u>Period of Noncompliance</u>	<u>Penalty per Day</u>
Days 1-30	\$ 300
Days 31 - 60	\$ 500
Over 60 Days	\$ 1,000

72. Payment of stipulated penalties as set forth above will be in addition to any other rights or remedies which may be available to the United States or its agencies or to the State of Ohio or its agencies by reason of Fostoria's failure to comply with the requirements of this Consent Decree and all applicable federal, state or local laws, regulations, waste water discharge permit(s) and all other applicable permits. However, in the event that the United States and/or the State of Ohio seek statutory penalties for a violation of any requirement of this Decree for which Fostoria previously has paid a stipulated penalty, the amount of the statutory penalty will be reduced by the amount of the stipulated penalty previously paid.

73. The payment of stipulated penalties will not be construed so as to relieve Fostoria from specific compliance with this Decree or federal or state law, or limit the authority of U.S. EPA or Ohio EPA to require compliance with such laws. The United States and State of Ohio are specifically authorized to seek injunctive relief in this civil action to address any violation of this Consent Decree.

74. Stipulated penalties will accrue from the first day of noncompliance with any applicable provision of this Consent Decree, but will not be payable until demand. Payment of stipulated penalties will be made within thirty (30) days of the date of a written demand for payment. Written demand by either U.S. EPA or Ohio EPA will constitute written demand from both of those agencies. Fifty (50) percent of the stipulated penalty will be paid to the United States and fifty (50) percent of the stipulated penalty will be paid to the State of Ohio.

75. If any stipulated penalties payable under this Decree to the United States are not paid when due, interest will accrue on any amounts overdue to the United States from the first day after the civil or stipulated penalties are due through the date of payment at the rate of

interest established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. If any stipulated penalties payable under this Decree to Ohio are not paid when due, interest will accrue on any amounts overdue to the State of Ohio from the first day after the stipulated penalties are due through the date of payment at the rate of interest of ten percent pursuant to Ohio Revised Code § 1343.03.

76. Any interest owed or stipulated penalties incurred by Fostoria to the United States will be paid by certified or cashiers check payable to "Treasurer, United States of America," and will reference USAO File Number 2003V02426, DOJ Case Number 90-5-1-1-08204, and the civil action case number and case name of this action assigned to this matter by the United States District Court for the Northern District of Ohio. Checks will be tendered to the United States Attorney's Office, Financial Litigation Unit, Four Seagate, Third Floor, Toledo, Ohio 43604, and will be accompanied by a letter specifying the specific stipulated penalty provision involved, and a description of the violation(s) of this Decree for which the stipulated penalties are being tendered. Simultaneously, a copy of the check and letter will be sent to the Water Division, the Office of Regional Counsel of U.S. EPA Region 5, and U.S. DOJ, as provided in Section XVI ("Notices and Submissions").

77. Any interest owed or stipulated penalties incurred by Fostoria to the State of Ohio will be paid by certified or cashiers check payable to "Treasurer, State of Ohio," accompanied by a copy of the same letter submitted to the United States in the immediately preceding paragraph, and will be sent to:

Mark Lemmon, Paralegal
Attorney General's Office
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215-3400

78. The existence of a dispute will not excuse, toll or suspend any obligation or deadline established by this Consent Decree or any stipulated penalties which accrue as a result of a failure to meet any requirement of this Consent Decree. Stipulated penalties with respect to the disputed matter will continue to accrue but payment will be stayed pending resolution of the dispute as follows:

- a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing will be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. EPA's decision or order;
- b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Fostoria will pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;
- c. If the District Court's decision is appealed by any Party, Fostoria will pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing account within 60 days of receipt of the Court's decision or order. Penalties will be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent will pay the balance of the account to U.S. EPA or to Fostoria to the extent that it prevails.

X. EFFECT OF SETTLEMENT

79. This Consent Decree is entered into as full and final settlement of this action for all Parties to the following extent: the Consent Decree resolves the civil claims of the United States for the violations alleged in the United States' Complaint through the Date of Lodging of

this Decree and the civil claims of the State of Ohio for the violations alleged in Ohio's Complaint through the Date of Lodging of this Decree.

80. This Consent Decree in no way affects or relieves Fostoria of its responsibility to comply with any federal, state, or local law, regulation, or permit, or to obtain any applicable federal or state permits or approvals including, but not limited to, a permit to install, or to obtain any permit or approval required by state or federal law, including, but not limited to, a permit to install and/or plan approval from Ohio EPA.

81. The Parties agree that Fostoria is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree will be no defense to any actions commenced pursuant to said laws, regulations, or permits. Nothing in the Consent Decree, however, will preclude Fostoria from raising defenses available under its NPDES Permit, or any renewals or modifications thereof, in any such actions.

82. The United States and Ohio expressly reserve all remedies available to them for all violations of the CWA not specifically addressed by Paragraph 79 of this Consent Decree.

83. Nothing herein will be construed to limit the authority of the United States or the State of Ohio to undertake any action against any person, including Fostoria, in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

84. Nothing herein will be construed to limit the authority of the United States to act under Section 308 of the CWA, 33 U.S.C. § 1318.

85. The United States and the State of Ohio reserve any and all legal and equitable remedies available to enforce the provisions of this Decree.

86. This Consent Decree does not limit or affect the rights of Fostoria, the State of Ohio, or the United States as against any third parties.

87. The Consent Decree will not limit any authority of U.S. EPA or Ohio EPA under any applicable statute, including the authority to seek information from Fostoria or to seek access to the property of Fostoria.

XI. NOT A PERMIT

88. This Consent Decree is not and will not be construed as a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, or Section 6111.03 O.R.C., nor as a modification of any existing permit so issued, nor will it in any way relieve Fostoria of its obligations to obtain a permit for its WWTP, its Sewer System or any other part of its waste water treatment and Sewer System or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

89. Nothing herein will be construed as relieving Fostoria of the duty to comply with the CWA, the regulations promulgated under the CWA, and all applicable permits issued under the CWA and its regulations.

XII. FAILURE OF COMPLIANCE

90. The United States and Ohio do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Fostoria's complete compliance with this Consent

Decree will result in compliance with the provisions of the CWA, 33 U.S.C. §§ 1251 et seq., or with Fostoria's NPDES Permit or any future modifications or renewals. Notwithstanding U.S. EPA's and Ohio EPA's review or approval of any plans, reports, policies, or procedures formulated pursuant to this Consent Decree, Fostoria will remain solely responsible for any non-compliance with the terms of this Consent Decree, all applicable permits, the CWA, and regulations promulgated under the CWA. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit will neither affect nor postpone Fostoria's duties and obligations as set forth in this Consent Decree.

XIII. CONTINGENT LIABILITY OF THE STATE OF OHIO

91. Ohio is a party plaintiff hereto pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e). Ohio will have no liability under this Consent Decree, except as required by Section 309(e) of the CWA in the event that the laws of Ohio prevent Fostoria from raising revenues needed to comply with this Consent Decree. The Attorney General of the State of Ohio hereby certifies that the present laws of Ohio do not prevent Fostoria from raising revenues needed to comply with this Consent Decree.

XIV. RIGHT OF ENTRY

92. U.S. EPA and Ohio EPA, and their representatives, contractors, consultants, and attorneys will have the right of entry into and upon Fostoria's WWTP and Sewer System, at all reasonable times, upon proper presentation of credentials, for the purposes of:

- a. Monitoring the progress of activities required by this Consent Decree;
- b. Verifying any data or information required to be submitted pursuant to this Consent Decree;

- c. Obtaining samples and, upon request, splits of any samples taken by Fostoria or its consultants;
- d. Inspecting and evaluating any portions of Fostoria's WWTP and Sewer System;
- e. Inspecting and reviewing any records required to be kept under the terms and conditions of the Consent Decree, Fostoria's NPDES Permit, any future modifications or renewals thereof, and the CWA;
- f. Otherwise assessing Fostoria's compliance with this Consent Decree.

93. This Section in no way limits or affects any right of entry and inspection held by the United States, U.S. EPA, Ohio, and Ohio EPA pursuant to applicable federal or state laws, regulations, or permits.

XV. RECORD RETENTION

94. Fostoria will maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, plans, or studies submitted to U.S. EPA or Ohio EPA pursuant to this Consent Decree or pursuant to Fostoria's NPDES Permit for a period of five (5) years from date of submission. Fostoria will require any independent contractor implementing any portion of this Consent Decree to also retain such materials for a period of five (5) years from date of submission. Fostoria will submit such supporting documents to U.S. EPA and/or Ohio EPA upon request. Fostoria will provide U.S. EPA and Ohio EPA with written notification 15 business days prior to the destruction of any documents required to be retained under this Decree.

XVI. NOTICES AND SUBMISSIONS

95. Except as specified otherwise, when written notification (including all reports) or communication with the United States, U.S. EPA, the United States Department of Justice, the

State of Ohio, Ohio EPA, and Fostoria is required by the terms of this Consent Decree, it will be addressed as follows:

As to the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-08204

As to Region 5 of U.S. EPA:

Chief
Water Enforcement and Compliance Assurance Branch
Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd
Chicago, Illinois, 60604

Deirdra Tanaka
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson, Blvd.
Chicago, Illinois 60604

As to the State of Ohio:

Northwest District Office
Division of Surface Water
Attn: Enforcement Group Leader
Ohio Environmental Protection Agency
347 Dunbridge Rd.
P.O. Box 466
Bowling Green, Ohio 43402-0466,

Chief
Environmental Enforcement Section
State of Ohio Office of Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400

As to Fostoria

Safety Service Director
213 South Main St.
P.O. Box 1007
Fostoria, OH 44830

All notifications or communications will be deemed submitted on the date they are postmarked and sent by first class mail or certified mail.

XVII. FORCE MAJEURE BETWEEN THE UNITED STATES AND FOSTORIA

96. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of Fostoria or the control of any entity controlled by Fostoria, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances will not, in any event, be considered Force Majeure events. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of the City to approve contracts, will not, in any event, be considered Force Majeure events.

97. When Fostoria knows or should have known, by the exercise of due diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Fostoria will notify U.S. EPA, in writing, within fourteen (14) days after Fostoria first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice will indicate whether Fostoria claims that the delay should be excused due to a Force Majeure event. The notice will describe

in detail the basis for Fostoria's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Fostoria will adopt all reasonable measures to avoid or minimize such delay. Failure to timely notify U.S. EPA may, at U.S. EPA's option, render this Section void and of no effect as to the event in question, and may be a waiver of Fostoria's right to obtain an extension of time for its obligations based on such event.

98. If U.S. EPA finds that a delay in performance is, or was, caused by a Force Majeure event, it will extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties will not be due to the United States for such period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section XIX (Dispute Resolution) will apply, and Fostoria will have the burden of proving that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

99. An extension of one compliance date based on a particular event will not extend any other compliance date. Fostoria will make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XVIII. POTENTIAL FORCE MAJEURE BETWEEN OHIO AND FOSTORIA

100. If any event occurs that causes or may cause Fostoria to violate any requirement of this Consent Decree, whether or not due to a Force Majeure event, Fostoria will so notify Ohio EPA, in writing, within fourteen (14) days after Fostoria knew, or in the exercise of due diligence should have known of the event. The notice will describe in detail the bases for Fostoria's

contention that it experienced a Force Majeure event, the precise cause or causes of the event, the measures taken or to be taken to prevent or minimize the noncompliance or event, and the timetable by which those measures will be implemented. Fostoria shall adopt all reasonable measures to avoid or minimize any such violation.

101. In any action by the State of Ohio to enforce any of the provisions of this Consent Decree, Fostoria may raise at that time the question of whether it is entitled to a defense that its conduct was caused by circumstances beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the State of Ohio does not agree that such a defense exists, it is, however, hereby agreed by Fostoria and the State of Ohio that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a proceeding to enforce this Consent Decree is commenced by the State. At that time, Fostoria will bear the burden of proving that any delay was or will be caused by circumstances beyond the control of Fostoria. Failure by Fostoria to timely comply with the notice requirements of the preceding Paragraph may constitute, at Ohio EPA's discretion, a waiver by Fostoria of any right it may have to raise such a defense. Changed financial circumstances or increased costs associated with the implementation of any action required by this Consent Decree will not in any event constitute circumstances beyond the control of Fostoria or serve as a basis for an extension of time under this Decree.

XIX. DISPUTE RESOLUTION

102. Any dispute that arises between Fostoria and Plaintiffs with respect to the meaning or application of any of the requirements of this Consent Decree will be, in the first

instance, the subject of informal negotiations between Plaintiffs and Fostoria in an attempt to resolve any such dispute. Such period of informal negotiations will not extend beyond forty-five (45) days of the date when a written notice of a dispute is given by one Party to the other, unless the Parties have agreed in writing to extend that period. After informal negotiations, if Fostoria and Plaintiffs are unable to agree upon the meaning or application of the requirements of this Consent Decree, then Fostoria will comply with the position taken by Plaintiffs, subject only to Fostoria's right to petition the Court as set forth in Paragraph 103, below. This dispute resolution process shall not apply to the issuance, renewal, modification, denial or revocation of a permit or plan approval and the issuance of orders or other actions of the Director of Environmental Protection (Ohio EPA).

103. Within forty-five (45) days of the end of the informal negotiations period for resolution of the dispute set forth in Paragraph 102, above, Fostoria may petition the Court for relief. Such petition will set forth the nature of the dispute and a proposal for its resolution. Plaintiffs will have forty-five (45) days to respond to the petition and propose an alternate resolution. In any such dispute, Fostoria will bear the burden of proof. Applicable principles of law regarding the standard of review will apply.

104. The filing of a petition asking the Court to resolve a dispute will not in and of itself extend or postpone any obligation of Fostoria under this Consent Decree, provided that payment of any stipulated penalties with respect to the disputed matter will be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties will accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Fostoria does not prevail on the disputed issue, stipulated penalties, if

applicable and demanded, will be assessed and paid as provided in Section IX ("Stipulated Penalties").

XX. RETENTION OF JURISDICTION

105. This Court will retain jurisdiction of this matter for the purposes of construing, implementing, administering, and enforcing the terms and conditions of this Consent Decree and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Consent Decree.

XXI. MODIFICATION

106. Any non-material modification of this Decree by agreement of the Parties will be in writing and will be filed with the Court. Any material modification of this Decree by agreement of the Parties will be in writing and will be filed with the Court for approval. Nothing in this Decree will be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXII. TERMINATION

107. Two years after the City of Fostoria has completed all construction required by its approved Evaluation of Control Alternatives Plan, Fostoria may seek, in writing, approval from U.S. EPA and Ohio EPA for termination of this Decree. In addition to certifying that all required construction is complete and that at least twelve months of post-construction monitoring shows the effectiveness of Fostoria's CSO controls, Fostoria also will certify that it is and has been in compliance with its NPDES Permit for at least twelve (12) months, that all civil penalties due and all stipulated penalties demanded under this Decree have been paid, and that Fostoria has complied with all other requirements of this Decree. Unless, within ninety (90) days of receipt of

Fostoria's certification under this Paragraph, either the United States or the State of Ohio objects in writing with specific reasons, the Court may, upon motion by Fostoria, order that this Consent Decree be terminated. If either the United States or the State of Ohio objects to the certification by Fostoria then the matter will be submitted to the Court for resolution under Section XIX (Dispute Resolution) of this Consent Decree. In such case, Fostoria will bear the burden of proving that this Consent Decree should be terminated.

XXIII. FINAL JUDGMENT

108. Entry of this Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

109. This Consent Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the public comments regarding this Decree disclose facts or considerations which indicate that this Decree is inappropriate, improper, or inadequate. Fostoria will not withdraw its consent to this Decree during the period of governmental and judicial review that occurs between lodging and entry of this Decree, and Fostoria hereby consents to the entry of this Decree without further notice.

110. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXV. SIGNATORIES

111. The undersigned representative of each of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the Parties to this document.

XXVI. EFFECTIVE DATE

112. The effective date of this Decree will be the date of entry by this Court.

SO ORDERED THIS _____ DAY OF _____, 2006.

United States District Judge

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

FOR THE UNITED STATES

SUE ELLEN WOOLDRIDGE

Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

ANNETTE M. LANG

Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
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Ben Franklin Station
Washington, D.C. 20044-7611
Phone: (202) 514-4213
Fax: (202) 616-6584

GREGORY A. WHITE

United States Attorney
for the Northern District of Ohio

GUILLERMO "BILL" J. ROJAS

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Northern District of Ohio
Four Seagate, Suite 308
Toledo, OH 43604
Phone: (419) 259-6376
Fax: (419) 259-6360

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

MARK POLLINS

Director

Water Enforcement Division

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

OF COUNSEL:

ROBERT C. KLEPP

Attorney

Office of Civil Enforcement

U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW

Washington, DC 20460

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

BHARAT MATHUR
Acting Regional Administrator
U.S. EPA Region 5

DEIRDRE FLANNERY TANAKA
Associate Regional Counsel
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

APPROVED:

FOR THE STATE OF OHIO

JIM PETRO
ATTORNEY GENERAL

By:

Todd K. DeBoe
Margaret A. Malone
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, OH 43215-3400
Phone: (614) 466-2766
Fax: (614) 644-1926

Attorneys for the State of Ohio

The undersigned party hereby consents to the Consent Decree in the matter of United States and Ohio v. City of Fostoria (N.D. Ohio).

FOR THE CITY OF FOSTORIA

WILLIAM H. RAINS
Safety Service Director
City of Fostoria
213 South Main St.
P.O. Box 1007
Fostoria, OH 44830